IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CONTEMPT PETITION NO.109 OF 2002

Kikubhai Chhaganbhai Patel .... Petitioner
Vs.
Ramnik K. Makhija & Ors .... Respondents

WITH

CONTEMPT PETITION NO.210 OF 2002

Raychand Nishi Dedhia .... Petitioner
Vs.
Ramnik K. Makhija & Ors. .... Respondents

Shri G.S. Hiranandani with Ms H.B. Gandhi
for the Petitioner.

Shri A.H. palekar, Asst. Government Pleader,
for the Respondent-State.

Shri Ramnik K. Makhija, the Respondent No.1,
present in-person.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: OCTOBER 29, 2004

ORAL ORDER:

1. Since common questions of law and facts arise in both these petitions, they were heard together and are being disposed of by this common order.

2. In both the petitions the grievance of the petitioners relate to non-compliance of the order of the School Tribunal, Pune in relation to the direction

issued to the respondents for reinstatement of the petitioners in the services with full back wages with effect from 18-11-1998 and further that those directions were required to be complied with within two months from the receipt of the said order. It is the contention of the petitioners that the inspite of the said order being duly communicated to the respondents, they have failed to comply with the said order.

3. Upon hearing the learned Advocates for the parties and on perusal of the records, it is seen that the petitioners herein had preferred Contempt Petition Nos.360 and 361 of 2000 respectively and both the petitions were disposed of with the following order:-

> "The breach alleged is of the order passed by the School Tribunal at Pune on 24th November, 1998. The petitioner has an efficacious alternative remedy under the provisions of Section 13 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. In that view of the matter, the petitioner is at liberty to adopt proceedings under the Act. The Contempt Petition is accordingly disposed of."

4. In view of the fact that the contempt petitions filed by the petitioners complaining about non-compliance of the order dated 24-11-1999 of the School Tribunal, Pune were disposed of leaving it open to the petitioners to approach the competent authority in terms of Section 13 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, it is not permissible for the petitioners to again approach this Court for initiation of proceedings for contempt of Court. It is to be noted that initiation of contempt proceedings is not as a matter of right to the complainant. The complainant has merely to establish before the Court that the order of the Court has not been complied with and there is a breach in that regard on the part of the person who was required to comply with the order. Once the said fact is brought to the notice of the Court, if the Court is convinced that an action in the nature of contempt of Court is necessary against such person for violation of the Court's order, certainly the Court can initiate such proceedings. However, even after being convinced of the fact that there has been violation of the Court's order, the complainant cannot insist for initiation of the contempt proceedings and the order in that regard is entirely in the discretion of the Court. Even where the Court finds that the order of the Court has been violated, the Court can still refuse to initiate contempt proceedings if the

Court finds the matter to be of trifle nature and does not warrant an action under the Contempt of Courts Act, or the act of non-compliance of the order does not disclose to be wilful. Being so, there being no right assured to the complainant of an action under the Contempt of Courts Act in case of violation of the order of the Court, once such complaint is rejected by the Court, the complainant cannot file a second complaint with the same grievance. On this count itself the present proceedings are liable to be rejected.

5. It is also to be noted that the contempt proceedings are not initiated to enable the parties to seek execution of the order in respect of which grievance is made about the non-compliance thereof. It is essentially to uphold the dignity of the Court to ensure that the Court's orders are not violated. That by itself does not mean that merely because the violator of the Court's order may warrant penalty in the form of imprisonment or fine, that the complainant in that regard is entitled to get any particular relief in the nature of the order in respect of which the breach is complained of. No complainant can seek to initiate such proceedings as a matter of right and insist for any relief in his favour in such proceedings. It is entirely in the discretion of the Court to decide about the order to be passed in such proceedings. On this

count also, once the complaint is rejected by this Court, the complainant is not entitled to reagitate the same grievance again before this Court.

6. The provisions of Section 13 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 clearly provide for penalty to the person who violates the order of the School Tribunal. In that sense those provisions also provide for penalty like the one provided under Section 12 of the Contempt of Courts Act in case of violation of the Court's order. Being so, once the petitioners were given liberty to approach the competent authority under Section 13 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, and there being no material placed on record to disclose that any such effort having been made by the petitioner, and if not, the reason therefor, there is absolutely no justification for entertaining the present second complaints under the Contempt of Courts Act.

7. Attention was drawn to the decision of the Division Bench of this Court in the matter of **Chandrakant Ganpat Shelar and others v. Sophy Keely, Hill Garange High School, Bombay and others,** reported in 1987 Mh.L.J. 1012 by the learned Advocate for the petitioners. Therein it was held:-

"Apart from the fact that the provisions of the Act do not exclude the operation of the Contempt of Courts Act, the law is to the contrary, namely that the provisions of the Contempt of Courts Act are in addition to the provisions of special statute even if such a statute provides for punishment for contempt of Courts. Section 22 of the Contempt of Courts Act makes this position very clear, when it states that the provisions of the Act shall be in addition to, and not in derogation of, the provisions of any other law relating to the contempt of Courts. If this is so even where a special law makes provision for contempt of Courts, it is difficult to appreciate the contention that when a statute like the present one does not make provision for Contempt of Courts, but merely provides for prosecution of the offender the exclusion of the Contempt of Courts Act should be read in it. This being the position in law, all that we have to find out is whether the respondents are

guilty of the contempt of Court within the meaning of the Contempt of Courts Act."

8. Apparently, the Division Bench has nowhere held that the complainant can approach the Court as a matter of right for initiation of contempt proceedings against the person who is stated to have violated the Court's order. Merely because the proceedings of Contempt of Courts Act are in addition to the provisions contained in any other law to punish the defaulters of the orders passed and directions given by the Court, that by itself does not mean that the complainant can seek as a matter of right any relief in such contempt proceedings. Being so, the decision of the Division Bench does not justify the initiation of contempt proceedings in the case in hand, where the application filed by the petitioners was already dismissed and the petitioners were granted liberty to approach the authorities under Section 13 of the said Act.

9. It is also to be noted that the contempt proceedings once rejected or dropped, cannot be reinitiated. In that regard one can advantageously refer to two decisions of this Court. In **Panjabrao Sadashiorao Wankhede v. Rajeev Agrawal, Secretary, Ministry of Co-operation, Mumbai,** reported in 2004 (2) Mh.L.J. 1047

considering Rule 17 of the Contempt of Courts Act (Bombay High Court Rules) which provides that the orders passed in contempt proceedings shall be carried out, enforced and executed as if they were orders passed by the High Court under the Code of Criminal Procedure, 1973 and referring to various reported decisions, including the decision of the Apex Court in the **State of Maharashtra v. Mahboob S. Alibay and Company,** reported in AIR 1996 SC 2131, it was held that the legislative policy in providing for an appeal only against the order of conviction and not against an order of discharge is an indication that once the contempt proceedings are dropped for any reason whatsoever, they ought not to be restored. The second one is in the matter of **Metal Box India Ltd. v. State of Maharashtra and others,** reported in 2004 (3) Mh.L.J. 528 wherein it was held that the High Court while exercising powers under the Contempts of Courts Act has no jurisdiction to review its own order. Taking into consideration both the above rulings, it is to be taken as a settled law that once the Court rejects for whatsoever reason the application for initiating contempt proceedings on the ground disclosed in the application, no second application on the same ground can be entertained.

10. In **Mohammad Salam Anamul Haque v. S.A. Azmi and others,** reported in 2001 (1) Mh.L.J. 249, it was

clearly held that the order passed in the proceedings before School Tribunal can be executed in accordance with the provisions of the Code of Civil Procedure and being so, it would not be appropriate to exercise the powers under the Contempt of Courts Act for non-compliance of the order of the School Tribunal, but rather the aggrieved party should be allowed to pursue the remedy of execution of such an order.

11. For the reasons stated above, therefore, there is no case for entertaining the petitions seeking initiation of the proceeding against the respondents for contempt of Court in the matter in hand and hence the petitions are dismissed. The notices issued to the respondents stand discharged.